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ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

REED P. ANDERSON
Deputy State Appellate Public Defender
I.S.B. #9307
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44523
Plaintiff-Respondent,)	
)	TWIN FALLS CO. NO. CR42-15-11389
v.)	
)	
TYLER WILLIAM BRADSHAW,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After a jury trial, Tyler William Bradshaw was found guilty of one count of attempted strangulation. The district court imposed a sentence of eight years, with three years fixed, but retained jurisdiction. Mr. Bradshaw asserts that the district court abused its discretion when it imposed an excessive underlying sentence.

Statement of the Facts & Course of Proceedings

In November of 2015, Twin Falls Police Officer Campbell was dispatched in reference to a domestic disturbance. (Presentence Report (*hereinafter*, PSI), p.3.) When he arrived outside

the apartment, he said he could hear yelling. (PSI, p.3.) When he entered the apartment, he spoke with Katherine Skullr who told him that she was sitting in bed with Mr. Bradshaw and playing a game on her phone, when Mr. Bradshaw took her phone away from her. (PSI, p.3.) She told Officer Campbell that she threatened to call the police, and Mr. Bradshaw started to strangle her. (PSI, p.3.) Officer Campbell saw red marks on Ms. Skullr's neck, and she said that her throat was sore. (PSI, p.3.)

Officer Campbell then spoke with Mr. Bradshaw. (PSI, p.3.) He explained that he was sitting in bed with Ms. Skullr when she started suffocating him with a pillow. (PSI, pp.3-4.) When asked about the red marks on Ms. Skullr's neck, he said that they were the result of sexual activity a few days prior. (PSI, p.4.) Officer Campbell then spoke with Ms. Skullr's roommate, who had placed the 911 call, and to Ms. Skullr's children who said that they saw their mother being "choked." (PSI, pp.4, 19.) Officer Campbell subsequently arrested Mr. Bradshaw. (PSI, p.4.)

After a jury trial, Mr. Bradshaw was found guilty of attempted strangulation. (R., pp.197-98.) At the sentencing hearing, the State recommended a sentence of fifteen years, with five years fixed. (7/26/16 Tr., p.15, Ls.5-9.) Mr. Bradshaw's counsel requested that the district court place Mr. Bradshaw on probation or retain jurisdiction, so Mr. Bradshaw could participate in a rider program. (7/26/16 Tr., p.24, Ls.10-24.) With respect to the underlying sentence, Mr. Bradshaw's counsel said, "A five plus five for ten that the state is asking for may be a reasonable underlying sentence" (7/26/15 Tr., p.24, Ls.14-16.) The district court imposed an underlying sentence of eight years, with three years fixed but retained jurisdiction. (R., p.199; 7/26/15 Tr., p.31, L.19 – p.32, L.1.) Mr. Bradshaw successfully completed the rider, and the district court reinstated his underlying sentence but suspended that sentence and placed

him on probation for three years. (Order Upon 365-Day Review Hearing, I.C. § 19-2601(4) (augmented to the record contemporaneously).)

ISSUE

Did the district court abuse its discretion when it imposed an underlying sentence of eight years, with three years fixed, following Mr. Bradshaw's conviction for attempted strangulation?

ARGUMENT

The District Court Abused Its Discretion When It Imposed An Underlying Sentence Of Eight Years, With Three Years Fixed, Following Mr. Bradshaw's Conviction For Attempted Strangulation

Based on the facts of this case, Mr. Bradshaw's underlying sentence of eight years, with three years fixed, is excessive because it is not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, the appellate court will conduct an independent examination of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

Independent appellate sentencing examinations are based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). In such a review, an appellate court considers "whether the court acted within the boundaries of such discretion, consistent with any legal standards applicable to its specific choices, and whether the court reached its decision through an exercise of reason." *State v. Hass*, 114 Idaho 554, 558 (Ct. App. 1988). When a sentence is unreasonable based on the facts of the case, it is an abuse of discretion. *State v. Nice*, 103 Idaho 89, 90 (1982). Unless it appears that confinement was necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case," a sentence is unreasonable.

State v. Toohill, 103 Idaho 565, 568 (Ct. App. 1982). Accordingly, if the sentence is excessive, “under any reasonable view of the facts,” because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are mitigating factors that illustrate why Mr. Bradshaw’s underlying sentence is excessive under any reasonable view of the facts. First, Mr. Bradshaw had a very difficult childhood. He stated that he did not meet his father until he was 14 years old. (PSI, p.12.) He said he also “moved from school to school” as a child and actually attended four different high schools. (PSI, pp.12, 14.) He also explained that he “basically raised” his little brother because his mother had to work so much to support the family. (PSI, pp.12-13.) He also said that his mother, and his maternal uncle were alcoholics.

Mr. Bradshaw has also struggled with alcohol abuse. At the sentencing hearing, he admitted he had a drinking problem and said, “Every problem that I’ve had in my life is because of that.” (7/26/15 Tr., p.26, Ls.6-7.) And, at the trial, Mr. Bradshaw stated that he and Ms. Skullr were drinking on the night of the alleged offense. (4/14/16 Tr., p.280, Ls.7-13.) Mr. Bradshaw also admitted that his problems with supervision in the past were a result of his unwillingness to stop drinking. (7/26/15 Tr., p.26, Ls.8-10.) However, he said that he now wanted to be “a productive member of society” and realized that, if he continued to drink, he was “probably going to die.” (7/26/15 Tr., p.29, Ls.9-20.)

A defendant’s difficult childhood and substance abuse problems are recognized mitigating factors. *See State v. Gonzales*, 123 Idaho 92, 93-94 (Ct. App. 1993); *State v. Nice*, 103 Idaho 89, 91 (1982) (reducing defendant’s sentence, in part, because “the trial court did not give proper consideration of the defendant’s alcoholic problem, the part it played in causing defendant to commit the crime [the defendant had been drinking at the time of the offense] and

the suggested alternatives for treating the problem”). In light of the presence of these mitigating factors, Mr. Bradshaw asserts that the district court abused its discretion when it imposed his underlying sentence because it did not adequately consider these factors, and therefore did not reach its decision through an exercise of reason.

CONCLUSION

Mr. Bradshaw respectfully requests that this Court reduce his underlying sentence as it deems appropriate.

DATED this 15th day of May, 2017.

_____/s/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15th day of May, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TYLER WILLIAM BRADSHAW
7210 SAN FERNANDO DRIVE
BOISE ID 83704

WILLIAM H WOODLAND
DISTRICT COURT JUDGE
E-MAILED BRIEF

GEORGE P ESSMA
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

RPA/eas